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(1)

Attorneys for Plaintiff
DIANA CARDONA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DIANA CARDONA,
Plaintiff,

v.

LINCOLN D. GARDNER, P.C.; and DOES 1
through 10, inclusive,
Defendants.

Civil Action No. 4:16-cv-02426

COMPLAINT

DEMAND FOR JURY TRIAL

11 U.S.C. § 1692 *et seq.*

Diana Cardona, Plaintiff, brings this action against Lincoln D. Gardner, P.C., for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

1. The Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

1 10. On or around February 3, 2016, Defendant LDG mailed Plaintiff a letter through
2 the mails, attempting to collect the purported debt.

3 11. Among other language, the letter contained the following notice (the "Notice"):
4 This debt will be assumed to be valid unless you dispute its validity or any part thereof
5 within thirty (30) days after receiving this letter. If you notify me that the debt is disputed
6 within thirty (30) days, I will mail you a verification of the debt. I will also provide you
with a name and address of the original creditor upon your request within thirty (30) days
of the date of this letter.

7 (*See* Ex. A.)

8 12. The Notice fails to meet the requirements of 15 U.S.C. § 1692g.

9 13. The Notice is misleading for at least the following reasons:

- 10 a. The first sentence fails to inform the consumer that her verification rights are not
11 triggered unless the dispute is in writing;
- 12 b. Its second sentence fails to inform the consumer that a dispute of any portion of
13 the debt would require verification to be mailed; and
- 14 c. The last sentence suggests that such information would be provided without any
15 further action by the consumer, and it also shortens the request window to thirty
16 (30) days "of the date of this letter" rather than 30 days after receipt.

17 14. On account of the misleading Notice, Plaintiff has suffered an informational
18 injury about her rights.

19 **CAUSE OF ACTION: 15 U.S.C. § 1692g**
20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 15. Plaintiff repeats, realleges, and incorporates by reference all preceding paragraphs
22 as though fully set forth herein.

23 16. Defendant LDG is a "debt collector," as defined by the FDCPA, 15 U.S.C. §
24 1692a(6).

25 17. Defendant LDG uses the mail and telephone communications in its business.

26 18. Defendant LDG regularly collects or attempts to collect debts asserted to be due
27 to another.

1 19. Defendant LDG's violations of the FDCPA include, but are not necessarily limited
2 to, misleading statements of a consumer's verification rights under 15 U.S.C. § 1692g.

3 20. As a result of Defendant LDG's actions, Plaintiff is entitled to an award of actual
4 and statutory damages, as well as an award of costs and attorney's fees.

5
6 **WHEREFORE**, Plaintiff, DIANA CARDONA, requests that this Court:

- 7 (a) Award Plaintiff actual and statutory damages;
8 (b) Award Plaintiff attorney's fees, litigation expenses, and court costs; and
9 (c) Grant Plaintiff/Debtor such other and further relief as is just and proper under the
10 circumstances.

11 Dated: May 4, 2016

LAW OFFICES OF GEOFF WIGGS

J. ERIK HEATH, ATTORNEY AT LAW

/s/ Geoffrey E. Wiggs

GEOFFREY E. WIGGS

Attorneys for Plaintiff